

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

IN RE: . Chapter 11  
BOY SCOUTS OF AMERICA AND . Case No. 20-10343 (LSS)  
DELAWARE BSA, LLC, .  
. Courtroom No. 2  
. 824 North Market Street  
. Wilmington, Delaware 19801  
. .  
Debtors. . Friday, November 12, 2021  
. . 10:00 A.M.

TRANSCRIPT OF OMNIBUS HEARING  
BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

## APPEARANCES:

For the Debtor: Derek Abbott, Esquire  
MORRIS, NICHOLS, ARSHT & TUNNELL LLP  
1201 North Market Street, 16th Floor  
Wilmington, Delaware 19899

- and -

Jessica C. Lauria, Esquire  
Glenn Kurtz, Esquire  
WHITE & CASE LLP  
1221 Avenue of the Americas  
New York, New York 10020

Audio Operator: LaCrisha Harden, ECRO

Transcription Company: Reliable  
1007 N. Orange Street  
Wilmington, Delaware 19801  
(302) 654-8080  
Email: [qmatthews@reliable-co.com](mailto:qmatthews@reliable-co.com)

Proceedings recorded by electronic sound recording; transcript produced by transcription service.

1 TELEPHONIC APPEARANCES (Cont'd) :

2 For the Debtors: Adrian Azer, Esquire  
3 HAYNES & BOONE LLP  
4 800 17th Street NW, Suite 500  
Washington, DC 20006

5 For Century: Tancred Schiavoni, Esquire  
O'MELVENY & MYERS LLP  
6 Times Square Tower  
7 7 Times Square  
New York, New York 10036

8 For the FCR: Robert Brady, Esquire  
9 YOUNG CONAWAY STARGATT & TAYLOR LLP  
Rodney Square  
10 1000 North King Street  
Wilmington, Delaware 19801

11 For Tort Claimants: James Stang, Esquire  
PACHULSKI STANG ZIEHL JONES LLP  
12 10100 Santa Monica Blvd., 13th Floor  
13 Los Angeles, California 90067

14 - and -

15 Debra Grassgreen, Esquire  
PACHULSKI STANG ZIEHL & JONES LLP  
16 One Market Plaza, Spear Tower  
40th Floor  
17 San Francisco, California 94105

18 For the Coalition of David Molton, Esquire  
Abused Scouts for BROWN RUDNICK LLP  
19 Justice: 7 Times Square  
20 New York, New York 10036

21 For the U.S. Trustee: David Buchbinder, Esquire  
UNITED STATES DEPARTMENT OF JUSTICE  
22 OFFICE OF THE UNITED STATES TRUSTEE  
844 King Street, Suite 2207  
23 Lockbox 35  
24 Wilmington, Delaware 19801

25

1 APPEARANCES (Cont'd) :

2 For Zalkin Law Firm: Thomas Patterson, Esquire  
3 KTBS LAW LLP  
4 1801 Century Park East, 26th Floor  
Los Angeles, California 90067

5 For Guam Abuse Survivors: Delia Lujan Wolff, Esquire  
6 LUJAN & WOLFF LLP  
238 Archbishop FC Flores  
7 Suite 300  
Hagatna, Guam 96910

8 For Survivor Creditors: Andrew Goldfarb, Esquire  
9 ZUCKERMAN SPAEDER LLP  
10 1800 M Street NW, Suite 1000  
Washington, DC 20036

11 For Eisenberg Rothweiler, Winkler,  
12 Eisenberg & Jeck: Daniel Hogan, Esquire  
HOGAN McDANIEL  
13 1311 Delaware Avenue  
Wilmington, Delaware 19806

14 For the AIG Companies: Michael Rosenthal, Esquire  
GIBSON, DUNN & CRUTCHER LLP  
200 Park Avenue  
15 New York, New York 10166

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1 MATTERS GOING FORWARD:

2 Debtors' Emergency Motion for Entry of an Order (I) Enforcing  
3 the Solicitation Procedures Order, (II) Enforcing Section 1103  
4 of the Bankruptcy Code Against the Tort Claimants' Committee,  
and (III) Granting Related Relief (D.I. 7118, filed  
11/10/2021)

5 **Court's Ruling: Matter Continued**

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1 (Proceedings commence at 10:04 a.m.)

2 THE COURT: Good morning. This is Judge  
3 Silverstein. We're here in the Boy Scouts of America  
4 bankruptcy, Case 20-10343.

5 I received some emails this morning. I want to  
6 make sure I understand what I have received.

7 Mr. Abbott, can you tell me what I received this  
8 morning?

9 MR. ABBOTT: Your Honor, I'm sorry, we couldn't  
10 hear anything you were saying on our end.

11 THE COURT: Okay. Thank you.

12 Can you hear me now?

13 (No verbal response)

14 THE COURT: No.

15 (Pause)

16 THE COURT: I'm going to try again. Can anyone  
17 hear me?

18 (No verbal response)

19 THE COURT: No.

20 THE CLERK: Good morning, counsel. This is the  
21 Delaware Bankruptcy Court.

22 Are you able to hear us on your end?

23 MR. ABBOTT: We are now, yes. Thank you.

24 THE COURT: Thank you. This is Judge Silverstein.  
25 We're here in the Boy Scouts of America bankruptcy, Case 20-

1 10343, for a limited hearing in connection with matters  
2 regarding the debtors' motion with respect to the email sent  
3 out by the committee.

4 So I received two -- I guess drafts of two letters  
5 this morning. I would like to understand what it is I have  
6 received.

7 Mr. Abbott.

8 MR. ABBOTT: Thank you, Your Honor. Derek Abbott  
9 of Morris Nichols here for the debtors.

10 Your Honor, as the court directed, the parties met  
11 and conferred to try to collectively come up with a single  
12 communication as to which all parties could agree.  
13 Unfortunately, they did not agree. What Your Honor has two  
14 letters; one that is proposed by the parties other than the  
15 TCC, the other proposed by the TCC.

16 Your Honor, I'm happy to turn it over to Ms. Lauria  
17 if you would like to hear discussion about those or ask  
18 questions. Obviously, all those folks are on the phone and  
19 happy to try to answer the court's questions and explain why  
20 they think that their particular letter is more appropriate.

21 THE COURT: Yes. Let me hear from Ms. Lauria, then  
22 I will hear from Mr. Stang. And I have some thoughts and  
23 questions, quite frankly, about the way to proceed, but let me  
24 hear from Ms. Lauria.

25 MS. LAURIA: Sure, Your Honor. Jessica Lauria,

1 White & Case, on behalf of the Boy Scouts.

2 Your Honor, Mr. Molton and others may have further  
3 comments or points that they want to make with respect to the  
4 letter, but from the debtors' perspective there are two points  
5 of distinction between the two letters that are meaningful to  
6 us.

7 I am looking at the TCC's letter, and the way you  
8 can tell it's the TCC's, I'm not sure how they were labeled  
9 when you received them, Your Honor, but if you see the bold  
10 language in, sort of, I guess, the second paragraph of the  
11 letter the first sentence of the bold language says,

12 "Our distribution of Mr. Kosnoff's email and letter to  
13 the TCC email list was a mistake."

14 That is one instance where we have the first point  
15 of disagreement. The TCC would like to characterize it as a  
16 mistake. The plan -- the debtor and I believe the other plan  
17 supporters want to characterize it as wrong and inappropriate,  
18 and I can tell you why.

19 Just for sake of completeness I want to point you  
20 to the second point of dispute, again, at least from the  
21 debtors' perspective and that is at the end of -- after you  
22 see the bold language there is one sentence called out not in  
23 bold, the next paragraph the last sentence of that says  
24 parties in the BSA bankruptcy case have asserted that Mr.  
25 Kosnoff's email and letter contain false, misleading and

1 inaccurate statements that are inconsistent with the court  
2 approved disclosure statement, and that the TCC's counsel  
3 should not have used its email account to send Mr. Kosnoff's  
4 letter.

5 The dispute is that this says parties in the BSA  
6 bankruptcy case instead of just affirmatively saying it  
7 contained false, misleading and inaccurate statements, and  
8 that the TCC's counsel should not have sent the letter. So,  
9 again, from the debtors' perspective those are the two  
10 principal points of contention between the two letters.

11 We believe, when I look at that first point of  
12 contention, mistake v. wrong and inappropriate, as I  
13 understand it the TCC believes that sending the email to Mr.  
14 Kosnoff's purported clients was not a mistake, that they sent  
15 that intentionally and that the only mistake that was made was  
16 sending it to the broader TCC server.

17 We think they are still just missing the boat on  
18 this point, Your Honor. We think there are four reasons why it  
19 was, in fact, wrong and inappropriate.

20 Reason one is we don't think the official TCC email  
21 address should ever be used to be sending a state court  
22 counsel's communication to his clients, period, full stop.  
23 That should not ever happen. That should not be used for the  
24 official email address. And to make matters worse, a we  
25 understand it, they relied on Mr. Kosnoff's representation

1 that the 12,000 individuals were his clients, but unlike Omni,  
2 and I will turn to what Omni does in a moment, I don't believe  
3 that there was any diligence done in terms of ascertaining  
4 whether these individuals were, in fact, his clients. Again,  
5 even if they did we still think it's wrong.

6           We still think they should not be using the  
7 official email address, but if they were going to even take  
8 that position, you know, Omni will only assume that an attorney  
9 represents an individual if the survivor indicated on their  
10 proof of claim form that they are represented by counsel and  
11 identified the counsel, or if the attorney provides an actual  
12 engagement letter or written verification that that attorney  
13 represents each and every individual that they purport to  
14 represent. As we understand it that didn't happen here. So  
15 that is issue one.

16           Issue two for why it was wrong and inappropriate is  
17 they read the cover email that Mr. Kosnoff sent before they  
18 sent it. That cover email clearly contains derogatory and  
19 defamatory remarks about another attorney in this case. It is  
20 wrong and inappropriate to utilize the official TCC email  
21 address to make those remarks. It was, essentially, an  
22 endorsement of those remarks. That was wrong and  
23 inappropriate.

24           We also think it was wrong and inappropriate to use  
25 an official TCC email address to point people to that twitter

1 feed. I don't look at twitter, you don't look at twitter, but  
2 there are derogatory and defamatory statements about the court  
3 and individuals involved in the case on twitter. We're not  
4 trying to curtail Mr. Kosnoff's right to say what he wants to  
5 say on twitter, but that should not be endorsed by an official  
6 committee that was appointed by the United States Trustee in  
7 this case.

8                 Third, we believe that it was inappropriate to send  
9 out something that does have false and misleading statements,  
10 and I will come back to that in a moment, but at a minimum  
11 there does not appear to be any evidence that the TCC reviewed  
12 the letter that Mr. Kosnoff prepared and compared that letter  
13 against the court approved disclosure statement or the TCC's  
14 own communications which we spent five days reviewing.

15                 Finally, Your Honor, we think it was wrong and  
16 inappropriate because it simply wasn't a mistake. We supplied  
17 the emails to the court that during the course of Saturday,  
18 the day that the email communication went out, and it went out  
19 on a rolling basis over the course, it appears, of several  
20 hours. Mr. Molton reached out to the Pachulski Firm on at  
21 least three occasions to say, guys, what are you doing. I am  
22 getting this email. There are people getting this email that  
23 are represented by other counsel and no action was taken until  
24 Sunday to try to stop it. That just doesn't feel like a  
25 mistake to us. We do think it was wrong and inappropriate.

1                   As to the next point, Your Honor, again, just  
2 simply asserting that parties in the bankruptcy case have  
3 asserted Mr. Kosnoff's email and letter contained false,  
4 misleading and inaccurate statements and that parties in the  
5 case are saying the TCC shouldn't have done it we think the  
6 court should say they shouldn't have done it, number one,  
7 because they shouldn't have done it. Two, and this will come  
8 out maybe more fully on Wednesday, but we have identified nine  
9 problems, and these were in our motion, with the statements  
10 made in Mr. Kosnoff's email.

11                  In addition to the defamatory remarks, which I  
12 think are, in fact, false, misleading and inaccurate  
13 statements, and I think we can all agree to that, not just  
14 parties in the case, but all of us can agree to that. In  
15 addition to pointing to people to a twitter feed that contains  
16 false, misleading and inaccurate statements there are seven  
17 instances in the letter that Mr. Kosnoff sent that depart from  
18 what the court approved in the disclosure statement and in the  
19 TCC communication that is false, misleading and inaccurate.  
20 It is not simply that parties in the case are saying it, the  
21 email itself said it.

22                  Your Honor, those are the two issues. Beyond that  
23 I would like to acknowledge, Your Honor, that the parties work  
24 very hard yesterday to come to ground on this form of  
25 communication. I think when you look at the two forms of

1 letter they are actually substantially similar. So we are  
2 only before you on a couple of discreet points, but those are  
3 the points.

4 THE COURT: Thank you.

5 MR. BUCHBINDER: Your Honor, this is Dave  
6 Buchbinder. I hate to interrupt, but apparently some  
7 documents have been submitted to the court and they haven't  
8 been submitted to the U.S. Trustee. And I would like counsel  
9 to send me copies of these letters immediately.

10 Thank you very much.

11 THE COURT: Thank you. Someone see that that is  
12 done, please.

13 Mr. Molton.

14 MR. MOLTON: I hope you can hear me, Your Honor.

15 THE COURT: I can.

16 MR. MOLTON: I am not going to repeat everything  
17 that Ms. Lauria said. Be advised that we support all of her  
18 points. I am going to just talk about what we consider to be  
19 the differences and just add some further support for what Ms.  
20 Lauria said.

21 Clearly the TCC wants to send out a letter with  
22 court approval that characterizes what they did as an  
23 unintended mistake against wrong and appropriate. Your Honor  
24 heard Ms. Lauria and I think we all agree the coalition, Ms.  
25 Lauria and other parties that you heard from a couple days ago

1 that notwithstanding that whether or not the TCC intended the  
2 email only to go to Mr. Kosnoff's clients to utilize a  
3 fiduciaries creditor survivor facing email platform to send  
4 out an inflammatory and, yes, defamatory email to those  
5 clients without anything suggesting that the email had been  
6 vetted and suggesting actually by the absence of any  
7 qualification whatsoever, and I'm not even saying a  
8 qualification would make it right, but the absence of anything  
9 suggested to the reader that the TCC was endorsing what was  
10 said.

11           We think that that was wrong, wrong in and of  
12 itself. We object to this letter trying to set the stage for  
13 Wednesday's hearing in characterizing this as an unintended  
14 mistake. Discovery is ongoing. We don't know whether it was  
15 unintended or not. That still has to be decided. This letter  
16 should not be used to put a thumb on the scale in connection  
17 with that issue.

18           Ms. Boelter has stated why the Kosnoff email and  
19 letter were misleading as opposed to be alleged to be  
20 misleading. I think that that is not subject to discovery,  
21 that is subject to taking a look at Your Honor's court  
22 approved disclosures and comparing that to the letter.  
23 Clearly what was contained in the letter was misleading.

24           Also, the proposed TCC email, Your Honor, is  
25 absolutely silent as to what was contained in the Kosnoff

1 email and letter. I think what they say, and this is the one,  
2 two, third paragraph on the proposed TCC email, three lines  
3 down, we acknowledge that the email and letter contain  
4 language directed against another lawyer and his law firm.  
5 What fluff, what cotton candy, what milquetoast. That is not  
6 an accurate depiction of what that email and corresponding  
7 letter contained. It contained inflammatory, and defamatory  
8 and prejudicial language against another lawyer in this case.

9 Again, this letter, which will be court approved,  
10 should not sanction, meaning approve, characterizing that  
11 language in such a misleading way because what the TCC letter  
12 does is, in effect, characterize that language in an  
13 inaccurate way. We think, you know, if it looks like a duck  
14 and walks like a duck it should be called a duck. It's a  
15 duck. Its inflammatory, it's defamatory.

16 Lastly, Your Honor, that goes to my final point, is  
17 that, again, I viewed differences in the letter. We tried  
18 very hard in our letter to be factual, purely factual; factual  
19 and nothing else. We view the TCC's letter with respect to  
20 the points that differ, and I think Ms. Boelter did a very  
21 good job of articulating that and I have tried to emphasize  
22 certain portions of that, as an attempt to preset, you know,  
23 and put an imprimatur of approval by way of court approval of  
24 this letter on the positions that, arguably or presumably,  
25 they're going to take as we go forward.

1           We respectfully request that Your Honor not do that  
2 and Your Honor put out an approved an appropriate email letter  
3 from the TCC that is factual and isn't a preemptive litigation  
4 piece.

5           Thank you, Your Honor.

6           THE COURT: Thank you.

7           Ms. Grassgreen.

8           MS. GRASSGREEN: Good morning, Your Honor. Debra  
9 Grassgreen of Pachulski Stang Ziehl & Jones on behalf of the  
10 official tort claimants committee.

11           Your Honor, I want to just take you back to where  
12 you started this hearing, I think the first words you said,  
13 which today is a limited hearing. The point of today is not  
14 to litigate the motion, that is for Wednesday. We haven't  
15 even had an opportunity to fully respond to the motion. It's a  
16 limited hearing about a communication that the parties have  
17 asked that go out from the TCC, signed by the TCC.

18           So where I agree with Mr. Molton is that that  
19 communication should not be any kind of finding of any of the  
20 issues that you are going to determine on Wednesday. What  
21 they are asking you to do does; it determines legal issues, it  
22 determines factual issues and it's signed by our firm.

23           So what I would like to do is just step back a  
24 little bit, give a little bit of context about what happened  
25 because I think the context is really important here, Your

1 Honor, about the two groups. This is not about setting up  
2 litigation strategy, this is about making sure that we are not  
3 confusing survivors. I would just assume see a letter go out  
4 that takes all of that out and is very basic. Then once you  
5 have a hearing and you make your findings then those findings  
6 can be transmitted, but you haven't done that yet. You  
7 haven't had an opportunity to do that and we haven't had due  
8 process on it.

9                 Let me step back and give a little bit of context  
10 because I have some real concerns about confusing survivors  
11 further. So if I could.

12                 Your Honor, two things happened last week that are  
13 the subject of the motion. And I think we can't gloss over  
14 them. I know Ms. Boelter just commented that there is a  
15 difference in our letters where we're talking about the TCC  
16 email list. I know we went through this with Mr. Stang. You  
17 didn't have the benefit of the letter in front of you or  
18 having read the motion when he made his comments last week,  
19 earlier in the week. So I would just like to take a moment to  
20 do that.

21                 First -- two things happened. First, our firm sent  
22 Mr. Kosnoff's letter with his cover email signed by him with a  
23 red line that said communication from Kosnoff to the client  
24 list that he provided, an email list that was actually  
25 provided by one of the other of the three that represent this

1 group of clients. This letter and the cover email -- this  
2 group of clients has three sets of lawyers already, three sets  
3 of lawyers representing one client and they're getting  
4 communications from those lawyers. Two of the law firms, as I  
5 understand it, are saying vote yes, vote yes, vote yes and one  
6 is saying vote no. That, in and of itself, is causing  
7 confusion and I know that because I have been answering  
8 questions that come on the town hall that --

9 THE COURT: That is their confusion. That is not  
10 the committee's concern.

11 MS. GRASSGREEN: Absolutely, but I don't was to  
12 exacerbate it, Your Honor. So if I could go through it. So  
13 that letter and the covering email, the attached letter was  
14 something that we understand they had already gotten, the  
15 covering email they hadn't gotten. So one group of people got  
16 a communication that included a letter saying vote no on the  
17 plan. It wasn't approved by the court, but, Your Honor,  
18 solicitations don't have to be approved post-disclosure  
19 statement. They do have to be truthful, they do have to be  
20 accurate, but they don't have to be approved once you approve  
21 a disclosure statement. We're not all limited to the  
22 boundaries of the disclosure statement. S that was one group.

23 There is a second group, which is what we call the  
24 TCC email list, that is kind of a mish-mash email list that  
25 our firm has just compiled over time of people that have

1 reached out to us. That list was a mistake. That was like on  
2 a completely different scale, but that was like me hitting  
3 reply all to an email that I didn't mean to send to someone.  
4 That -- those are not clients of Mr. Kosnoff, maybe some of  
5 them are. We are checking the list against each other, but  
6 that was never intended. We are not walking back from that we  
7 intended to do what we did which is send the cover email to  
8 Mr. Kosnoff.

9                   The reason why it's important is because if you  
10 look at the language without you having determined that it was  
11 false or misleading, and without you have determined that it  
12 was defamatory, and Mr. Molton said this is just the facts,  
13 well defamatory is not a fact, it's a legal conclusion. And,  
14 you know, false and misleading has to be based on some sort  
15 of, you know, evidentiary showing and that is the hearing that  
16 we are having on Wednesday.

17                   So what I am concerned about for the Kosnoff group,  
18 let's take that group first, is what does it do to send to a  
19 client something signed by our law firm that says your client  
20 is giving -- your lawyer is giving you false information. I am  
21 sending that to somebody else's client.

22                   THE COURT: Well didn't you already do that when  
23 you --

24                   MS. GRASSGREEN: No, we didn't.

25                   THE COURT: -- said that Rothweiler's information

1 was wrong.

2 MS. GRASSGREEN: We didn't because the cover email  
3 was signed by Kosnoff.

4 THE COURT: Under the committee's --

5 MS. GRASSGREEN: It wasn't signed by --

6 THE COURT: -- email it was an endorsement. It had  
7 to be an endorsement. It was nothing but an endorsement.  
8 It's really super unfortunate here what has happened, but I do  
9 agree that in my concern, quite frankly, is the court  
10 imprimatur on something that, quite frankly, the TCC is going  
11 to sign that doesn't pre-judge things and that doesn't force  
12 the committee's counsel to further, perhaps, breach their  
13 professional responsibilities and obligations. I am very  
14 concerned about this.

15 What does Mr. Rothweiler want to go out? Has  
16 anyone spoken with him because to me, I will tell you and what  
17 I believe a concern that no one has yet expressed, but  
18 concerns me, is that the clients -- Mr. Kosnoff's clients were  
19 represented by three firms. The committee -- I don't know,  
20 but I suspect the committee did not have permission from all  
21 three firms to send a communication to their clients, their  
22 collective clients.

23 MS. GRASSGREEN: No, Your Honor, we did not. We  
24 had permission from Mr. Kosnoff and --

25 THE COURT: I find that problematic. I find that

1 problematic. There are three law firms that represent those  
2 clients and you only had permission from one.

3 MS. GRASSGREEN: I understand that, Your Honor. I  
4 will tell you we did it on advice of ethics counsel. We  
5 previously (indiscernible) TCC notices.

6 THE COURT: That is really interesting that you  
7 felt the need to get advice of ethics counsel for that. That  
8 is very telling. And I will be interested in hearing that  
9 advice that the committee got because I find that very  
10 problematic especially because the committee knows that the  
11 lawyers disagree. The lawyers disagree, the committee knows  
12 it.

13 The committee turned a private attorney/client  
14 communication that was not a solicitation into a solicitation  
15 endorsed by the committee. The question is what do I do about  
16 it that doesn't create more confusion, that doesn't prejudge  
17 issues that are in front of me, but you can hear my very  
18 strong preliminary thoughts?

19 How do I, because I have the preliminary thoughts I  
20 have, permit a letter to go to clients, forget for the moment  
21 the non-clients, but the clients in what I think could be a  
22 breach of professional ethics?

23 MS. GRASSGREEN: Well, Your Honor, if I could, we  
24 don't want to create more problems. We are really, really  
25 working hard, and we did work hard with the parties, to try to

1 come to a consensus on this and I think there are two  
2 competing things going on here, right, which you have just hit  
3 the nail on the head.

4 One is we don't want to create more confusion and  
5 we don't want to prejudge issues. So the other point that Mr.  
6 Stang made is that an email has gone out to all of the  
7 parties, right, saying this was sent to you in error. I  
8 believe it went, and Mr. Lucas is on the phone I can confirm,  
9 saying you shouldn't have gotten this email, we apologize.

10 It was initially our view that it be a very simple  
11 letter. We apologize for any confusion, we weren't meaning to  
12 endorse it, and leaving all the other issues to Wednesday. I  
13 guess the question is should we wait until Wednesday to send  
14 something and then whatever you rule --

15 THE COURT: I don't think we can. I think the more  
16 time that passes the more potential there is for taint of the  
17 vote that the committee has caused.

18 MS. GRASSGREEN: I mean the other alternative, Your  
19 Honor, that I can suggest is that -- I mean for our firm to  
20 sign something that this was defamatory when you haven't made  
21 that ruling we're not comfortable with it, we don't think its  
22 right to say it was inappropriate, false. You haven't made  
23 those findings. I hear your preliminary comments.

24 THE COURT: Does the committee have a view?

25 MS. GRASSGREEN: Well we don't believe it was

1 defamatory as a legal matter, but we will brief it if it gets  
2 raised.

3 THE COURT: No. I'm asking if the committee has a  
4 view. The committee has now had time to think about this.  
5 Does the committee have a view?

6 MS. GRASSGREEN: We -- I don't think everything in  
7 -- I think Mr. Kosnoff's cover email was inflammatory. I do  
8 not disagree with that, Your Honor. The letter -- many of the  
9 points in the letter it was inconsistent with -- it was  
10 perhaps inconsistent with disclosure, but I don't think there  
11 is anything wrong with that. It's his view to his clients.  
12 It's a letter he had already sent.

13 I don't necessarily, Your Honor, but my suggestion  
14 that I think might help with this is that if other -- we used  
15 the PSZJ email address to send the letter from Mr. Kosnoff.  
16 We're happy to use that same email address and send the letter  
17 that the debtor wants sent, if you tell us to do it, that they  
18 signed from the same email address; same exact level of  
19 implied endorsement. But for us to say it when you haven't  
20 determined it yet and it hasn't been addressed is different.

21 I personally, in the discussions over the course of  
22 the last day I thought that the two groups needed to be  
23 treated differently, that it would be super confusing for  
24 someone who is not a Kosnoff client to get something talking  
25 about Kosnoff's clients, and his communications because

1 they're different. One was it was never meant for you, but  
2 still we didn't endorse it, and here is how you fix it, and  
3 here is all the other things that we agreed to say about it.

4                 The other is, and clearly the language was  
5 disrespectful -- Mr. Stang said it the other day and I'm going  
6 to say it again, we do not endorse the twitter feed. We  
7 didn't republish the twitter feed. That was in the debtors'  
8 motion. None of us think that that is an appropriate  
9 professional way to communicate. I certainly don't. Mr.  
10 Stang doesn't. He has devoted endless years of his life to  
11 doing this work and that is not the way that he communicates.

12                 So I am just going to put that aside. But if the  
13 alternative is so that the scales are exactly the way they  
14 were we can use the PSZJ email address and if the debtor wants  
15 to sign this and the coalition we will send it out. But, you  
16 know, as you said there is a lot of pre-judgment here. It is  
17 not purely factual. There are legal conclusions in this  
18 letter and they have consequences.

19                 THE COURT: I think we can say in the letter the  
20 court will be having a hearing on whether or not the language  
21 was false, misleading, inaccurate, defamatory, et cetera, that  
22 will be an accurate statement.

23                 MS. GRASSGREEN: That is accurate, Your Honor. We  
24 have no problem with that.

25                 I don't know, Your Honor, if you have the redline

1 in front of you, but I can pull it up on my share screen if  
2 you want to look at the comparison language or we can use our  
3 letter.

4 THE COURT: I found the redline to -- it's got too  
5 much going on to be useful.

6 MS. GRASSGREEN: I mean one of the fundamental  
7 questions is whether or not the group that isn't his clients  
8 should get an email that says -- should get a letter that has  
9 a lot of the same stock and the court's holding a hearing on  
10 all of this. This wasn't meant for you, delete it, disregard  
11 it, it wasn't meant for you. We are not walking back on the  
12 fact that the other group it was meant for. And if that was  
13 ill-advised or poor judgement we will address that with you on  
14 Wednesday.

15 Again, we apologize for all the confusion that it  
16 has caused, but we just don't want to exacerbate the problem.  
17 These are survivors and, frankly, these legal nuances are not  
18 going to be clear to them. They are absolutely not. There is  
19 a wide range of understanding in this group. You know, many  
20 of them are elderly and, you know, it's just going to create  
21 even more if we're not simple, direct, we try to keep it to  
22 one page. Parties did work hard together and, you know, this  
23 was just really where we ended up at the point of contention.

24 THE COURT: Thank you.

25 MS. GRASSGREEN: Thank you, Your Honor.

1                   THE COURT: Mr. Hogan.

2                   MR. HOGAN: Good morning, Your Honor. Daniel Hogan  
3 of Hogan McDaniel on behalf of Eisenberg, Rothweiler, Winkler,  
4 Eisenberg & Jeck.

5                   Your Honor, I will be brief. I will let the court  
6 know that Mr. Rothweiler is attending the hearing listening in  
7 and so he is aware of what is going on. He and his firm are,  
8 obviously, sick about what has happened.

9                   Your Honor, I agree with counsel that the context  
10 is important and the context of this entire controversy  
11 relates to, really, what is an ill-conceived attempt to  
12 influence the vote. From the little I have seen, and I  
13 haven't been involved in every bit of the discovery or any of  
14 it, honestly, but it appears that this originated at the  
15 Pachulski Stang Firm, this whole construct.

16                  From our perspective it's problematic because,  
17 number one, it impacts the voting process at a critical  
18 juncture. It damages the integrity of the ongoing mediation  
19 process which is important to the hopeful resolution of this  
20 case and equally important to both Eisenberg, Rothweiler, and  
21 Ken Rothweiler personally. These statements are clearly  
22 detrimental to their reputation.

23                  So they have got a great concern about what is  
24 contained in the letter and how it's perceived by people. The  
25 perception in these cases is important particularly for the

1 survivors. And so we ask that our version, the debtors'  
2 version of the letter be approved.

3 Thank you.

4 THE COURT: Mr. Hogan, from that I take it that Mr.  
5 Rothweiler is okay with a communication coming from the  
6 official committee email to his clients, at least, at this  
7 point if it's the debtors' letter.

8 MR. HOGAN: Yes, Your Honor, that's correct. If  
9 it's the debtors' letter. Obviously, without any endorsement  
10 of the first letter that went out over the weekend, which it  
11 had no knowledge of, and which, obviously, it was detrimental  
12 to their interests.

13 THE COURT: Do you also represent AVA law firm or  
14 does somebody else represent them? I don't remember. Are they  
15 represented?

16 MR. HOGAN: Your Honor, Joe Grey of Cross & Simon  
17 now represents AVA Law. Dave Wilkes had originally  
18 represented both AVA Law and Mr. Kosnoff, but now they are  
19 represented by Cross & Simon.

20 THE COURT: Thank you.

21 Mr. Grey, are you on the -- at the hearing,  
22 attending the hearing?

23 (No verbal response)

24 THE COURT: Anyone from Cross & Simon?

25 (No verbal response)

1                   THE COURT: I don't hear anyone.

2                   Mr. Brady.

3                   MR. BRADY: Thank you, Your Honor. Robert Brady  
4 for the FCR.

5                   I won't belabor the record, Your Honor, but we do  
6 find this a very troubling situation and we're still reviewing  
7 the discovery responses that came in last night. But for all  
8 the reasons you've heard today, the FCR supports the debtors'  
9 version of the letter as the more appropriate response to this  
10 issue.

11                  THE COURT: Mr. Molton and then I'll go to  
12 Ms. Lauria.

13                  MR. MOLTON: Yeah, Judge, I'm going to be very  
14 brief. I just want to note that I did receive -- this  
15 morning, the TCC had a town hall last night, their normal  
16 Thursday town hall. The issue of confusion is manifest, Your  
17 Honor, and critical.

18                  My understanding is there was a question about this  
19 letter raised during that town hall. That's what I  
20 understand, and I've had a busy morning, so just am telling  
21 you what I understand to be the facts on the ground. And,  
22 accordingly, it's imperative, Your Honor, that this remedy get  
23 out as soon as possible. And it's not a distinction between  
24 those it was intended to and not.

25                  The TCC has to disavow themselves from what was,

1 clearly, as Your Honor suggested, an endorsement of  
2 Mr. Kosnoff's letter and email. They've got to do that to  
3 everybody. They have to distance themselves and acknowledge  
4 what I think counsel for the TCC acknowledged was, it's not  
5 defamatory -- she wouldn't use that term -- but inflammatory  
6 language. And this has got to get out soon.

7 I hear that Mr. Rothweiler's counsel has consented  
8 to that. Needless to say, they may be asking for other  
9 remedies next week.

10 But, clearly, the most immediate need is for a  
11 remedial email, clearly, unequivocally to the point that does  
12 all the things that I think Ms. Lauria mentioned, that I've  
13 already stated, and that is within the debtor-proposed letter,  
14 that every other party that you've heard from on this, other  
15 the TCC, support.

16 Thank you, Judge.

17 THE COURT: Thank you.

18 Ms. Lauria?

19 MS. LAURIA: Thank you, Your Honor.

20 Again, Jessica Lauria, White & Case, on behalf of  
21 the debtors. I'll be brief, because I think Mr. Molton  
22 actually addressed my point.

23 We think there should only be one letter and that  
24 one letter should come from the TCC and it should go to all of  
25 the individuals that received the initial communication. That

1 is the appropriate remedial relief at this point in this  
2 proceeding before we get to Wednesday. That letter is not an  
3 attorney-client communication between Rothweiler and the  
4 clients or Mr. Kosnoff and the clients; it's an official  
5 communication from the TCC, from their official email address  
6 conveying the message in the letter that we submitted to the  
7 Court.

8 Thank you, Your Honor.

9 THE COURT: Thank you.

10 Ms. Grassgreen?

11 (No verbal response)

12 THE COURT: You're muted, Ms. Grassgreen.

13 MS. GRASSGREEN: Thank you. I'm sorry, Your Honor.  
14 It's still early here on the West Coast.

15 Your Honor, just briefly, we did absolutely say in  
16 the letter and we -- and wanted to (indiscernible) up front  
17 and we're happy to move that up front that the forwarding --  
18 the distribution of the letter was not an endorsement by the  
19 TCC of the contents of those documents. I think that is the  
20 point that we just heard Mr. Molton say. That's the point  
21 that you brought up. And I think that is the central point.

22 The other conclusions that are going to be for  
23 another day -- and, again, we've heard your preliminary views  
24 on it and we know what we're facing -- that's different to  
25 raise those issues. And we're not suggesting that anyone get

1 two letters, right; we're just suggesting that the clients of  
2 Mr. Kosnoff's letter might be tailored a little different than  
3 the non-clients because for them, it was never -- I'm a little  
4 uncomfortable telling a client of a lawyer to delete a  
5 communication from their lawyer, right, without -- if you tell  
6 us to do it, we'll do it, but it made me a little  
7 uncomfortable, which is why I was thinking, as I was thinking,  
8 (indiscernible) from the survivors' standpoint, that everybody  
9 should get one letter.

10                 And I've asked our office to do the work, to  
11 compare the two lists and make sure there's not anybody on  
12 both so we don't get people getting multiple communications.  
13 And so, that is being done right now and will be done before  
14 any communication goes out.

15                 But, you know, somebody who's his client is  
16 different than somebody who is not his client.

17                 THE COURT: The communication came from the  
18 Committee, not from him. So, you're asking them to delete  
19 your communication. I'm not sure how different that is than  
20 sending a communication in the first instance.

21                 MS. GRASSGREEN: Well, it was forwarded from our  
22 email address, but it was not signed by us or purported to be  
23 signed by us.

24                 THE COURT: And what does that mean to you? What  
25 does that mean to you, that it was forwarded from your email,

1 but it wasn't signed by us, what does that mean to you?

2 MS. GRASSGREEN: Well, the re line said, see  
3 attached communication from Kosnoff, right; it didn't say --  
4 so, it was a transmission and I think there's a difference  
5 between us transmitting someone else's statement. If one says  
6 to me, would you forward the email that so and so sent you,  
7 doesn't mean that I've adopted or endorsed what's in the  
8 email; it means that I've forwarded it.

9 THE COURT: And what does that mean?

10 That's sort of like the people who say, oh, I  
11 didn't view the whole tweet to see what it says; I just re-  
12 tweeted it.

13 MS. GRASSGREEN: Well, I -- your question was, is  
14 it our communication and we don't think it was.

15 THE COURT: I guess I would -- you should be  
16 prepared --

17 MS. GRASSGREEN: A consequence of us forwarding it  
18 are clear -- are becoming clearer and, again -- but that's for  
19 Wednesday. And if there's needs to be an order saying, we did  
20 all these wrong things -- we're not asking you to find that it  
21 was not false today. We're not asking you to find that it was  
22 not misleading. We are not asking you to find that it was not  
23 defamatory.

24 But we're not asking you to find that it -- they're  
25 asking you to say that it is by asking us to admit it and

1 something signed by our firm. So, you know, and until you've  
2 done that, it's going to create more confusion for the  
3 survivors. So, I think the appropriate communication is we  
4 didn't endorse it. We're sorry for the confusion. Here's how  
5 you fixed it. We do not support the personal comments. Mr.  
6 Rothweiler deserves to be treated with respect to.

7 All of that is there, Your Honor. I think the only  
8 points of contention are -- and we apologized. That's all  
9 there, everything. It was their initial words and we've  
10 adopted it. I think the points of contention are the  
11 statements: it's false; it's misleading; we shouldn't have  
12 done it; it's defamatory.

13 You know, I don't mind saying that the letter  
14 contains inflammatory language. That's fine. I'm happy --  
15 you can add that back in. But it is the other language that  
16 is troubling.

17 And, you know, I think your suggestion the Court is  
18 going to consider at a hearing whether it's false or  
19 misleading is fine. I mean, we put the language in that that  
20 was the debtors' position because we were trying to make sure  
21 that their views were provided, that it wasn't one-sided.

22 So, you know, I think that is where we are.

23 THE COURT: Thank you.

24 Mr. Goldfarb?

25 MR. GOLDFARB: Good morning, Your Honor.

1                   Andrew Goldfarb of the Zuckerman Spaeder firm. We  
2 represent about 1800 survivor claimants in the bankruptcy.  
3 I'm at a little bit of a disadvantage because I haven't seen  
4 the dueling letters that were submitted to Your Honor this  
5 morning.

6                   Our firm is a little bit, has been sort of  
7 particularly beset by unauthorized communications. Omni, the  
8 BSA sent out direct ballots to all of our claimants in late  
9 October, notwithstanding the fact that we had selected the  
10 master ballot option, then there were these unauthorized  
11 emails.

12                  We have been communicating and had to communicate  
13 several times with our clients to try to contain the situation  
14 and we've tried to be transparent and tried to be clear to  
15 maintain the integrity of the voting process and to make sure  
16 that our clients understand what is going on and minimize  
17 confusion. We have gotten lots of contact from clients about,  
18 both about the Omni direct ballots that were sent, as well as  
19 the recent emails from last weekend.

20  
21                  And so, we have tried to respond responsibly to all  
22 of these unauthorized communications we've received. I don't  
23 know the contents of what's before Your Honor in terms of  
24 being sent out in the near term, but we did have some  
25 substantial concerns about the proposal that was in the BSA's

1 corrective email, in their motion, and so I just don't know if  
2 a lot of that content has gone out and it's a much cleaner  
3 letter, then I might not have concerns about it, but I just  
4 don't know what the contents are.

5 THE COURT: Mr. Goldfarb, two questions. One,  
6 what's your concern, and, two -- because I would like to hear  
7 it -- and, two, would you like the option of whether a further  
8 email goes to your clients or not?

9 MR. GOLDFARB: From our perspective, yes. I mean,  
10 we have -- in addition, Your Honor, we had, you know, we had  
11 several hundred, probably almost half of our clients had voted  
12 before the email went out, and so to the extent that there's,  
13 you know, sort of overlap between what went to our clients and  
14 those who had already voted, I don't -- again, there were  
15 suggestions in the BSA's email communication about re-voting  
16 and if you want to change your vote. Like, that should not go  
17 to clients of ours who voted, you know, so consistent with the  
18 information we sent to them and our recommendations and, you  
19 know, had fully considered in advance. So, we have problems  
20 with those types of, some of those types of suggestions.

21 And so, whatever goes should be tailored. There  
22 were -- you know, we were not comfortable with the statement  
23 in the BSA's proposed email that's in the motion referring to  
24 the number of law firms or whose clients support the plan and  
25 are urging support of the plan, because that, in our view,

1 changes the focus on the voting claimants to the lawyers and  
2 we didn't think that was appropriate because it could, in our  
3 view, it could at any time the way our clients perceive the  
4 course of the bankruptcy and whether it is advantageous or  
5 disadvantageous for them to vote a certain way.

6 And you know, we also, because we have already  
7 supplied the solicitation materials, including all of the  
8 letters, we don't think that those need to be resent and we  
9 didn't that that was an appropriate suggested remedy either.

10 Coming back to Your Honor's basic question, yes, we  
11 would prefer to regain control over the communications that we  
12 have with our clients and we feel like our clients, in  
13 particular, have been subject to unauthorized communications  
14 from, you know, sort of going in both directions and it is  
15 just creating a morass. They are caught in the middle of an  
16 fortunate situation and we continue to have a concern that  
17 additional communications is not consistent with the way that  
18 we want to represent our clients and we continue to have  
19 concern and frustration over having lost the ability to  
20 communicate clearly and in a way that we think is most  
21 appropriate for our clients, so thank you.

22 THE COURT: Thank you. Very helpful.

23 Ms. Grassgreen, has committee counsel, has  
24 Pachulski made any efforts to reach out to counsel who  
25 represent recipients of the emails to ask them what they want,

1 whether they want further communications or not? What  
2 communications has Pachulski had with counsel for represented  
3 recipients?

4 MS. GRASSGREEN: Your Honor, for that, I think I  
5 need to pass it over to Mr. Stang. I will say my  
6 understanding is that a number of folks, such as Mr. Goldfarb,  
7 such as lawyers representing, I think, others that are on the  
8 phone have reached out to us. And I know we have taken those  
9 inbound communications, but whether we have affirmatively  
10 reached out to others, beyond the initial outreach that Mr.  
11 Stang made right when asked to by Mr. Molton to say that it  
12 had gone out in error, I don't know. So, if you don't mind, I  
13 could ask that Mr. Stang respond to that.

14 THE COURT: Yes, Mr. Stang?

15 MR. STANG: Good morning.

16 THE COURT: Good morning.

17 MR. STANG: Thank you, good morning, Your Honor.

18 I do not believe that the firm has initiated any  
19 communications with any counsel or survivors, other than the  
20 email that was sent out that went out on Sunday. And because  
21 of the volume of emails, Your Honor, we push a "send" button,  
22 but it goes out in batches. We don't send it in batches, in a  
23 sense of pushing the button, the go-button more than once, but  
24 the technology does not instantly and simultaneously send them  
25 all out.

1                   So, Mr. Goldfarb contacted Mr. Lucas, who's on the  
2 call -- he's one of our partners -- they discussed the fact  
3 that this communication had gone out. Mr. Goldfarb asked us  
4 to remove his clients from what I'd refer to as the "TCC  
5 list." I don't know if we have yet identified all of  
6 Mr. Goldfarb's clients from the TCC list, but that was, to the  
7 best of my knowledge, the only communication that we've had;  
8 we didn't initiate anything.

9                   And in terms of the material, the lawyer  
10 representing the material number of people, because I don't  
11 know every single communication that Mr. Lucas may have  
12 received, we did hear from Mr. Goldfarb. I also -- I'm sorry,  
13 Your Honor, one other.

14                  Paul Mones, who is an attorney who represents a  
15 committee member, contacted me on Sunday, I believe it was  
16 Sunday morning, which is how I came to the full realization of  
17 what had happened and he told me that a couple of his clients  
18 had received the emails and asked me, what's going on?

19                  So, those are the two that I am aware of.

20                  THE COURT: Thank you.

21                  Okay. Ms. Lauria?

22                  MR. STANG: Your Honor, may I say one other thing,  
23 please?

24                  THE COURT: Yes.

25                  MR. STANG: I heard Mr. Goldfarb's comments about

1 his view of what the debtor had proposed in the order, which,  
2 obviously, is on the docket (indiscernible). Our letter, and  
3 I believe the letter from the debtor, does make reference to  
4 changing a vote. We were trying to accommodate as much as we  
5 could what the debtor was saying, but I also hear what Mr.  
6 Goldfarb is saying.

7 I can tell you that I am -- we get voting reports  
8 from the debtor, as do other parties in the case. There have  
9 been votes submitted. We're waiting for a report today, but  
10 my understanding is from the last voting report, about 1200  
11 votes had come into Omni. And I think that lags a week for  
12 the report, so it wasn't as of the date of the report. So,  
13 there's votes coming in.

14 And the reference to attorneys representing a  
15 majority of the survivors urging clients to vote yes, I think  
16 that's true. I mean, based on the communications I have seen  
17 both, those filed in the court -- obviously, the Coalition  
18 supports the fifth amended plan -- but also, and I made  
19 reference to this when I spoke to you last, there are dueling  
20 videos out there. One of those videos is from  
21 Mr. Rothweiler. One of those videos is from our committee co-  
22 chairs, Mr. Hump Humphrey and Mr. Kennedy. Theirs came after  
23 Mr. Rothweiler's.

24 And just as an aside, Your Honor -- you know what?  
25 I'm not going to go there.

1           So, we do think that the majority of the attorneys  
2 representing an overwhelming majority of the survivors are  
3 supporting the plan, but I also hear Mr. Goldfarb's concern,  
4 because he's not going to tell us what his recommendation was,  
5 and he shouldn't, that, you know, that his clients may say,  
6 Wow, if everyone else -- if an overwhelming majority of people  
7 are doing it and supporting it, maybe we should. And so I  
8 understand his concerns that wanted you to know where this  
9 language came from in terms of the letter that we were  
10 proposing.

11           THE COURT: Thank you.

12           MS. LAURIA: Your Honor, this is Jessica Lauria, if  
13 I just may respond briefly?

14           And I understand Mr. Goldfarb did not have the  
15 letter in front of him that was submitted to the Court this  
16 morning. The language in the letter pertaining to changing  
17 the votes, it now actually, I believe, says, "Please consult  
18 with your counsel if you wish to change your vote."

19           I think that's very important. We understand that  
20 there are a number of parties that would have already advised  
21 their client on how to vote.

22           But I do think that his remarks really put a fine  
23 point on why this communication that the TCC sent out over the  
24 last weekend -- and I know that we're not here on the broader  
25 point -- was so problematic to begin with. And I think you'll

1 hear from Mr. Molton that there are a number of state court  
2 counsel affiliated with the Coalition, including, my guess is  
3 Mr. Rothweiler, that very much disagree with the  
4 recommendation from Mr. Kosnoff that was sent by the TCC and  
5 the statements therewith, and we are trying to remedy those,  
6 as well.

7 I would also just say that I wasn't aware that Mr.  
8 Goldfarb had asked his clients to be backed out of that TCC  
9 list served and, obviously, subject to guidance from the  
10 Court, we will honor whatever the Court would like us to do in  
11 terms of who any communications should go to, but we take Mr.  
12 Goldfarb's point in that regard.

13 Your Honor, I guess my final point is -- and I  
14 don't think it's an issue for today -- but there were multiple  
15 references in Mr. Goldfarb's statements to "inappropriate  
16 communications" from BSA and Omni to his clients. We disagree  
17 with that. We filed at docket notice 6821, Omni,  
18 inadvertently sent direct ballots to the clients of three law  
19 firms that had elected the master ballot. We worked with  
20 those three law firms in terms of whatever remedy they wanted,  
21 we were willing to do, and I think we've resolved all of those  
22 issues, as reflected in Docket Number 6821.

23 Thank you, Your Honor.

24 THE COURT: Thank you.

25 MR. MOLTON: Your Honor, if I could just add a few

1 points to conclude?

2 THE COURT: Mr. Molton?

3 MR. MOLTON: Thank you, Judge.

4 First of all, I just want to make sure Your Honor  
5 understands that not just the Coalition supports the debtor  
6 letter, but I can affirmatively say that all the Coalition-  
7 affiliated law firms, which represents, as Your Honor knows,  
8 approximately 60,000-plus unique proof of claim survivors,  
9 supports the debtors' letter. I think the debtor has  
10 accurately accepted the language and has agreed to put in its  
11 letter regarding that an overwhelming majority of the --  
12 attorneys representing an overwhelming majority of the  
13 survivors in these cases support the plan and are urging their  
14 clients to vote yes on the plan. We didn't think that, in  
15 light of their agreement, that that was an issue. That's a  
16 fact.

17 Second of all, Your Honor, I just want to reiterate  
18 something that Ms. Lauria mentioned earlier. There are  
19 important mediations next week; accordingly, why discovery on  
20 this matter is going forward. We will be mediating in New  
21 York, you know, regarding very important issues with important  
22 remaining unsettled insurers and chartered organizations.  
23 And, accordingly, getting a remedy out to the survivors  
24 forthwith, as I like to say, is crucial.

25 Lastly, one of the things that is going to be

1 clearly a subject of discovery next week is did the Committee,  
2 itself, authorize this or was this just the Committee's  
3 counsel?

4 I note that we have the two co-chairs on the Zoom  
5 screen here, Mr. Kennedy and Mr. Humphrey. That is going to  
6 be an important subject of the discovery that's going to go  
7 forward over the weekend, Your Honor.

8 THE COURT: Mr. Stang, I see your hand.

9 MR. STANG: Thank you, Your Honor.

10 I was going to say that it's clear from this  
11 hearing that within a certain -- within the AIS, Abused in  
12 Scouting client base, they are getting conflicting messages.  
13 And it's not the message -- and as to conflict, these  
14 conflicting messages were communicated to them long before,  
15 and regularly, before our email went out, starting on last  
16 Friday.

17 Mr. Kosnoff has, for a long time, opposed the  
18 recommendations that his two other co-counsel have submitted.  
19 I just want to --

20 THE COURT: Right. So, why did you weigh in? So,  
21 why did you weigh in between that conflicting view that was  
22 happening among co-counsel or affiliated counsel or a movement  
23 or whatever they want to call themselves?

24 MR. STANG: Your Honor, we --

25 THE COURT: You're not making it better. This

1 doesn't give me -- I understand fully what's going on.

2 MR. STANG: Okay. Well, you asked me a question.

3 I'll answer it.

4 The Committee opposes confirmation of the plan.

5 THE COURT: Uh-huh. I understand that, too.

6 MR. STANG: Well, and the Committee regularly  
7 communicates that to its constituency, including through these  
8 town halls.

9 You asked me a question and I wanted you to know  
10 that we agree with Mr. Kosnoff on that principle. You know,  
11 we don't agree with what he says in the Twitter account. I  
12 said that last -- earlier, and I reiterate it.

13 But I just wanted you to -- since we're talking  
14 about confusion, I wanted you to know that the messages that  
15 these folks, these AIS clients are getting --

16 THE COURT: Why do you think I don't know that? Do  
17 you think I'm sleeping during the hearings?

18 MR. STANG: No, Your Honor, I don't think  
19 you're --

20 THE COURT: Why do you think I don't know that?

21 MR. STANG: Well, because there is -- well, Your  
22 Honor, then I take back what I just said to you as  
23 unnecessary.

24 THE COURT: Yeah. It's been quite clear for some  
25 time that that's the case.

1 MR. STANG: Okay.

2 THE COURT: Quite clear. Okay.

3 MS. GRASSGREEN: Your Honor, could I suggest maybe  
4 we look at the text of the letter; would that be a productive  
5 way to proceed at this point?

6 THE COURT: I'm looking at the text of the letters.  
7 I've been thinking about the text of the letters. Yes, Ms.  
8 Grassgreen, I think that is the most important thing.

9 But I also hear that Mr. Goldfarb does not want a  
10 communication with his client. He thinks that's further  
11 confusing for his clients and, therefore, I think his clients  
12 need to be taken off any communications. I would also like  
13 the Committee today, forthwith, to communicate with counsel or  
14 other represented recipients to find out whether they want a  
15 further communication to their client or not, and those  
16 requests need to be honored.

17 I said at the beginning or somewhere near the  
18 beginning that I am concerned with communications to  
19 represented parties. I am concerned to unrepresented, too. I  
20 don't know quite what to do with that, but I am concerned with  
21 communications to represented parties who have their own  
22 counsel who should be communicating with them and may be  
23 trying, themselves, to clear up the confusion, and another  
24 email may just be more confusion.

25 So, the Committee, today, forthwith, is to figure

1 out who on their list is represented by counsel and reach out  
2 to them to find out what they want.

3 MS. GRASSGREEN: Absolutely, Your Honor.

4 MR. STANG: Your Honor, just to make --

5 MS. GRASSGREEN: Absolutely. Mr. Stang --  
6 absolutely, Your Honor. We will take care of it. I'm  
7 actually going to ask --

8 MR. STANG: Your Honor, no -- this is a fact that  
9 Ms. Grassgreen isn't aware of. Mr. Goldfarb's firm, at one  
10 time, was parking lot of AIS and I would appreciate if he  
11 could communicate to us because the Coalition, or AIS -- AIS,  
12 I'm sorry -- AIS may ultimately say to us, send out the -- or  
13 you will say, send out the letter that includes AIS people,  
14 but Mr. Goldfarb's client --

15 THE COURT: AIS isn't going to say that. As you  
16 pointed out, they're not going to agree.

17 MR. STANG: Okay. Well, anyway, I just wanted to  
18 alert you to the fact that Mr. Goldfarb has some of his own  
19 clients and some of his clients are part of AIS; that's all I  
20 wanted to tell you. And we'll have to work that out with  
21 Mr. Goldfarb, I guess.

22 THE COURT: Yes.

23 MR. STANG: I'm sorry, I know Ms. Grassgreen  
24 doesn't want me to handle this hearing, and I didn't want to,  
25 but there are some additional things that I know because of

1 the history that she doesn't know.

2 MS. GRASSGREEN: I apologize for cutting him off,  
3 Your Honor, and double-attempting you.

4 THE COURT: Okay.

5 MS. GRASSGREEN: We're trying to keep -- the reason  
6 why I'm here, Your Honor, is we're trying to be as objective  
7 as possible. I wasn't involved so I don't have the same  
8 personal stake, although, I have a personal interest, so it's  
9 different. So, we were just trying to keep it at that level  
10 of, what do we do now? Let's be constructive in a very --

11 THE COURT: I understood --

12 MS. GRASSGREEN: -- (indiscernible) situation.

13 THE COURT: I understood that even without your  
14 saying that.

15 MS. GRASSGREEN: Thank you.

16 THE COURT: The letter. So, I think my reaction  
17 when I read the two letters, and, actually, I was informed --  
18 what I was informed of was who wrote what -- which one -- I  
19 said, No, that can't be. So, but my overall impression was  
20 they're not that different and Ms. Lauria has pointed out, I  
21 think, the two areas where there is some difference and that  
22 is the use of the words "mistake" versus "wrong" and  
23 "inappropriate"; quite frankly, maybe from what I'm hearing,  
24 it was all three.

25 I am troubled -- well, these are my preliminary

1 views about whether it was wrong or inappropriate, but this is  
2 coming under the signature from Pachulski Stang, not from me,  
3 and I'm not sure, quite frankly, that the nuance of the  
4 different between "mistake," "wrong," and "inappropriate" is  
5 going to be an issue for people reading this letter.

6 It is not going to prejudge what I determine on  
7 Wednesday. Nobody has to worry about that. I'm not going to  
8 make the Committee counsel use words that they disagree with  
9 in their letter. So, I'm going to -- I'm not going to make  
10 them change it.

11 And as for the statement about Mr. Kosnoff's letter  
12 containing false, misleading, and inaccurate statements,  
13 inconsistent with the Court-approved disclosure statement, I  
14 think we ought to say that the Court will be having a hearing  
15 on whether -- I think that's factual. It doesn't prejudge the  
16 contents of the letter, and we'll deal with it.

17 Again, maybe even saying the Court is having a  
18 hearing on it is a stronger statement than somebody's view,  
19 but I think it's accurate. Ms. Grassgreen has already  
20 indicated that she would state that statements in the, I  
21 believe in the email were inflammatory and I will let her add  
22 that to the letter.

23 I hear Mr. Goldfarb's concern about people changing  
24 votes and causing more confusion. I do think, however, that  
25 probably needs to go out in the letter, and that was in both

1 of the letters. I think the "you should contact your  
2 attorney" needs to be bolded and emphasized and maybe in caps,  
3 if you have one.

4 And the sentence that says in the second-to-last  
5 paragraph, "If you have questions to vote on the plan, we  
6 strongly encourage you to seek advice from your attorney," I  
7 want that bolded, as well. It actually seems to be maybe a  
8 little duplicative there in that sentence, but -- that  
9 paragraph.

10 MS. GRASSGREEN: Your Honor, I think it is in both  
11 letters (indiscernible), at least in the redline that I'm  
12 looking at. So, we will bold it and we will say it once,  
13 unless you would like us to say it --

14 THE COURT: I think say it once --

15 MS. GRASSGREEN: The attorney, "reach out to your  
16 attorney," we could also say that right up front in bold, if  
17 you'd like.

18 THE COURT: Let's say it once and, also, let's  
19 emphasize that we are not trying to interfere with the advice  
20 that you may be receiving from your own attorney, if  
21 represented.

22 MS. GRASSGREEN: Okay. We'll do that, Your Honor.

23 THE COURT: I would also like Committee counsel, or  
24 this may be -- Mr. Hogan, you could reach out to Mr. Gray to  
25 let him know how the communications we've had and

Ms.

1 Grassgreen and her group are going to be busy today. Mr.  
2 Hogan, maybe you can reach out to Mr. Gray and see if he has  
3 an issue with the communication going to the joint clients.

4 MR. HOGAN: Your Honor, I'd be glad to do that. I  
5 would ask that the debtor send me both versions of the letter  
6 so that I have the most current version when I send those to  
7 Mr. Gray, and I'd be happy to that.

8 THE COURT: Well, hopefully, we're going to come up  
9 with one here, but yes.

10 MR. HOGAN: You would -- yeah, thank you.

11 THE COURT: Yes, thank you.

12 Okay. Let me ask if there are questions. I think  
13 I've covered and given guidance on what needs to happen here  
14 so we can --

15 MR. PATTERSON: Your Honor -- one question, Your  
16 Honor?

17 THE COURT: I'm sorry. Mr. Patterson?

18 MR. PATTERSON: Yes, Your Honor. One question, if  
19 I might -- thank you, Your Honor. I know there's -- I don't  
20 know where I was in the queue, but I sort of lost touch with  
21 this issue, but I know Your Honor said in response to one  
22 counsel that if state court counsel do not want a further  
23 communication to go to their clients, we can make a  
24 communication to TCC counsel and instruct them as to that?

25 THE COURT: Yes.

1                   MR. PATTERSON: And will that also be in the  
2 Court's order today or is this just an informal bench order  
3 that is going with to approve the form of letter?

4                   THE COURT: Yeah, you know, this whole approval of  
5 the form of letter is really interesting. It's something now  
6 that I've been thinking about, why people want it, why courts  
7 give it, why it's appropriate or not.

8                   But I'm viewing today as permitting a letter to go  
9 out. I'm not micromanaging every word in this letter. I am  
10 letting you know I am making balls-and-strikes calls on a  
11 couple of issues that I think are really important.

12                  As I said, I'm not going to force the Committee to  
13 sign a letter that is not their view. So, in terms of  
14 approving it, I don't know exactly what that is, to be honest.

15                  MR. PATTERSON: I guess that's authorizing it, Your  
16 Honor.

17                  THE COURT: I'm permitting it to happen. I'm  
18 authorizing it. I'm not approving every word of it. It's a  
19 remedial situation I'm finding myself in, but absolutely I've  
20 given clear directive and to the extent there needs to be  
21 order from the bench, so ordered that Committee is to reach  
22 out to counsel who have clients who are -- were recipients of  
23 their previous email and if those counsel do not want their  
24 clients to receive anything else, they should not receive  
25 anything else.

1 MR. PATTERSON: Thank you, Your Honor.

2 THE COURT: Thank you.

3 MS. GRASSGREEN: Your Honor, with respect to that  
4 direction, I just want to clarify that that applies other than  
5 the Kosnoff list, right, because, certainly, we don't want a  
6 situation where Mr. Kosnoff says, no, I don't want it going to  
7 my clients and Mr. Rothweiler says, I want it going to my  
8 clients, and it's the same people and now we have problems.  
9 So, I think you mean that with respect to the TCC email list,  
10 the non-AIS clients, but I'd like to confirm because it's a  
11 complex issue.

12 THE COURT: Yes, I will overrule any objection Mr.  
13 Kosnoff has to this going to AIS clients, which is why I asked  
14 what Mr. Rothweiler wanted and why I asked Mr. Hogan to reach  
15 out to Mr. Grey. If AVA Law firm doesn't want that to happen,  
16 then people are going to have to get me back on the phone and  
17 we'll have a hearing.

18 MS. GRASSGREEN: Okay. Thank you, Your Honor. I  
19 just wanted to clarify because there's some overlap. And,  
20 unfortunately, we've gotten some communications from people  
21 that say I was with Abused in Scouting and I'm not anymore and  
22 now I'm with someone else. And we'll work through those  
23 issues as best as we can, that's all I can commit -- I'll  
24 commit to do that with every resource we have, but there are a  
25 lot of very complicated issues around the counsel

1 representation in this case, unfortunately, but we will put  
2 everything we have into it to try to do it as carefully and  
3 appropriately as possible.

4 If we're done with the letter, I thought that  
5 perhaps, given everything that's going on next week, we should  
6 talk about what the expectation is for Wednesday in light of  
7 this and --

8 MR. MOLTON: Your Honor, can I ask for  
9 clarification? I'm sorry to interrupt counsel, but before we  
10 leave the subject I've got a few questions and clarifications  
11 that I'm going to -- okay, thank you.

12 Number one, I know that you've allowed the TCC  
13 counsel to communicate with counsel other than Mr. -- the AIS  
14 counsel, asking them whether they should receive further  
15 communication. I just want to be clear, Your Honor, that,  
16 from my perspective, it can't be that milk toast. It's got to  
17 be advising them what happened, advising them of the hearing  
18 today, advising them that the TCC is going to be sending out  
19 the letter that we're coming to terms on, giving them an  
20 ability to read that letter, and then asking if they want that  
21 letter sent to their clients.

22 As I said, from the Coalition's perspective, we  
23 understand that every one of our law firms will agree to that  
24 under the circumstances of how the letter is being composed  
25 right now.

1 Number two -- so I think that needs to be --

2 THE COURT: So, yes, let me -- let's stop there.

3 Yes, I expect there to be a fulsome communication and, yes, I  
4 think it would be appropriate and probably necessary to send  
5 the letter, so counsel can see it and make a decision.

6 MR. MOLTON: Yes. Thank you.

7 MS. GRASSGREEN: Your Honor, we don't disagree with  
8 that at all.

9 MR. MOLTON: Second of all --

10 MS. GRASSGREEN: We (indiscernible) --

11 MR. MOLTON: -- Judge, we would -- we think it  
12 would be --

13 MS. GRASSGREEN: -- (indiscernible) --

14 MR. MOLTON: I'm sorry.

15 MS. GRASSGREEN: It's okay.

16 MR. MOLTON: Number two, Judge, we think it would  
17 be helpful, if not essential, that the TCC produce and file a  
18 declaration or affidavit stating all of the attorneys they  
19 contacted, who they were, and what the answer was accordingly,  
20 so that we all can -- so there's transparency to that process  
21 on this very, very important topic. So I would ask that as  
22 well, Your Honor.

23 THE COURT: Ms. Grassgreen, do you see an issue  
24 with that?

25 MS. GRASSGREEN: No issue, Your Honor.

1                   THE COURT: Thank you.

2                   MR. MOLTON: Okay. Lastly, Judge, we have the  
3 issue that we raised, I think, two days ago -- and, again,  
4 it's confounding -- is we have no idea, you know, how many --  
5 who forwarded the Kosnoff, you know, missive sent by the TCC  
6 over its forward-looking -- creditor forward-looking email to  
7 other survivors. And I don't have a solution to that, Judge;  
8 there may not be a solution to that. The letter itself tries  
9 to some extent address that. But, from my perspective, that's  
10 an important point that should not be lost as we go forward  
11 into next week, looking at the conduct that happened, how it  
12 happened, and the confusion and taint that it's caused.

13                  THE COURT: Okay. Thank you.

14                  MR. MOLTON: Thank you.

15                  THE COURT: I don't think that requires a response.

16                  Ms. Lauria?

17                  MS. LAURIA: Thank you, Your Honor. I believe Ms.  
18 Grassgreen was about to go to logistics for next week and I  
19 did want to address that from the debtors' perspective as  
20 well.

21                  I see Mr. Schiavoni maybe would like to be heard.  
22 I don't know if you want me to go forward with logistics or  
23 hear from Mr. Schiavoni first.

24                  THE COURT: Is Mr. Schiavoni --

25                  MS. LAURIA: I'll go ahead -- oh, okay.

1                   THE COURT: -- yeah, we lost him.

2 (Pause)

3                   MR. SCHIAVONI: I'm sorry, is Mr. Lauria --

4                   THE COURT: Oh, there you are.

5                   MR. SCHIAVONI: -- going to go forward? I'm fine -

6 -

7                   THE COURT: I just lost you and everything shifted.

8 Okay, Mr. Schiavoni.

9                   MR. SCHIAVONI: Oh, Your Honor, we have an  
10 application, a motion before Your Honor to depose Mr. Kosnoff,  
11 who's under subpoena, has been served, and who has taken the  
12 position he's not subject to the jurisdiction of the Court. I  
13 think that deposition is going to take place eventually no  
14 matter what, but if it's going to take place, it just seems to  
15 me it makes a huge amount of sense for it to take place  
16 Monday/Tuesday or, in any event, before the hearing.

17                  If you have a hearing on Wednesday about this  
18 event, not having the deposition of Mr. Kosnoff, it's sort of  
19 like having like a Shakespeare play without Shakespeare. I  
20 mean, he's at the center of this, the center of the issues  
21 about it, and, you know, his -- the issues about this AIS, how  
22 it's -- and the various issues that swirl around it and who  
23 he's communicated with here, it all is relevant to the  
24 hearing. This should take place at some point no matter what.  
25 There's a host of 100-percent purely factual issues.

1           You know, we don't want to depose Mr. Kosnoff about  
2 his communications with his clients or his opinions or things  
3 like this. But, you know, statements like the ones he made in  
4 his verified 2019 statement that he submitted to this Court  
5 about his signature page being attached to other proofs of  
6 claim without disclosing who or when, that's a purely factual  
7 issue, as are, you know, who he -- who -- you know, some  
8 issues directly going to this hearing.

9           And I could go on, but I think Your Honor has not  
10 been asleep during these hearings and knows exactly, like, the  
11 range of issues that are covered by him. And, you know, it's  
12 like we'd be looking to do this deposition any day between now  
13 and Wednesday that is of convenience to Mr. Kosnoff. He's --  
14 Mr. Kosnoff was, I believe, if I read the Zoom thing  
15 correctly, he was on the last hearing on Wednesday, so he knew  
16 about our application. We spoke to his lawyer about it; his  
17 lawyer submitted a letter about it. His lawyer's main  
18 contention in the letter was that a subpoena hadn't been  
19 served, but we've submitted copies of the subpoena, so -- and  
20 with the declaration of service, et cetera.

21           I don't know at this point whether we even, in a  
22 sense, need a subpoena given -- it's like the Court, you know,  
23 has the facts before it, you know, concerning this hearing  
24 about things that are directly important him.

25           I thought I saw Mr. Kosnoff appear on the Zoom bar

1 above, so I think he may actually be on the line right now.  
2 It is true Mr. Wilks told us he would not attend today, his  
3 lawyer, he said he was driving somewhere.

4 So, you know, we'd be prepared to have the  
5 application decided just on the papers.

6 THE COURT: Well, let me say this -- and I wish I  
7 knew my Shakespeare better --

8 MR. WILKS: Your Honor --

9 THE COURT: -- but --

10 MR. WILKS: -- Your Honor?

11 THE COURT: I'm hearing some --

12 MR. WILKS: Your Honor, David Wilks. I'm sorry --

13 THE COURT: Mr. Wilks.

14 MR. WILKS: Your Honor, can you hear me?

15 THE COURT: Yes.

16 MR. WILKS: Thank you, Your Honor. I have deep  
17 apologies to the Court for participating in this way. I am  
18 actually in the car. I have a family commitment that is  
19 absolutely unavoidable. And so I hope Your Honor can hear me  
20 and I hope Your Honor will forgive me for not appearing more  
21 appropriately.

22 But, if you can hear me, I would say, Your Honor,  
23 that there's just -- there's just an awful lot of reasons why  
24 it's inappropriate for Mr. Schiavoni's motion to be presented  
25 this morning. First of all, it was never noticed, there was

1 never a motion to shorten notice, it's not on the agenda, and  
2 so forth. This is, you know, one more attempt that Mr.  
3 Schiavoni has made to depose Mr. Kosnoff and, you know, he  
4 never sort of lets a good crisis go to waste.

5 The main thrust our motion was really two or  
6 threefold. One -- or our opposition -- one, yes, there was no  
7 subpoena served, and I can speak to what was submitted last  
8 night in reply for the first time in a moment, but really,  
9 Your Honor -- and I say this with all respect to Your Honor  
10 and this Court and this district, because this is where I've  
11 practiced my whole career -- this is the wrong court for Mr.  
12 Schiavoni to seek to enforce any subpoena that he has served,  
13 whether it's been served or not, because the subpoena that he  
14 claims to have served and the one that he actually did serve  
15 for the record was issued out of the Central District of  
16 California.

17 And so, under the rules -- and we put this in our  
18 letter and Your Honor -- Your Honor has been getting a lot of  
19 stuff, so I wouldn't be surprised if Your Honor wasn't able to  
20 get to my letter -- but the fact is Your Honor, frankly, just  
21 doesn't have jurisdiction over this application.

22 Now, there's also been an enormous failure of meet-  
23 and-confer on this because I asked Mr. Schiavoni -- he told me  
24 about three weeks ago that there's a notice of deposition and  
25 I asked him to send it to me, I hadn't seen it. I never heard

1 from him again. The next thing I heard about any deposition  
2 subpoena was the motion.

3 So, for that reason alone, the motion needs to be  
4 denied because they never met and conferred on it. I asked  
5 him for it three weeks ago, he never sent it to me; it was not  
6 attached to the motion. And, if he had met and conferred with  
7 me, I would have asked him, would you please show me the  
8 subpoena that you're talking about, but I never had that  
9 chance. He filed a motion without attaching the discovery at  
10 issue, that's a violation of the rules too, and he saved it up  
11 for a reply. And, candidly, Your Honor -- I don't want to get  
12 into this because I'm going to raise questions that I don't  
13 like in court without a lot of consideration, a lot of  
14 evaluation, but what was submitted last night, Your Honor,  
15 raises an awful lot of questions that do bear analysis and do  
16 bear careful evaluation before Your Honor goes and orders a  
17 deposition on such extremely short notice.

18 So I'll stop talking now, Your Honor. Thank you.

19 THE COURT: Okay, thank you.

20 I -- as I --

21 MR. SCHIAVONI: Your Honor, they do -- Mr. Kosnoff  
22 -- sorry, Your Honor, my apologies.

23 THE COURT: I don't need anything further on this.  
24 As I said, I wish I knew my Shakespeare better.

25 I don't view the hearing on Wednesday as centrally

1 focused on Mr. Kosnoff, although he's a player and his letter  
2 is there and, if he wants to participate, he should. But I  
3 think the question is about solicitation and what happened and  
4 the committee's participation, the use of the official  
5 committee email, whether this is an improper solicitation or  
6 not, whether it's perfectly acceptable, that's what I consider  
7 the hearing on Wednesday to be about and any further steps  
8 that we may need to take to remediate any harm that may have  
9 happened.

10           I will say this, however, that I do view Mr.  
11 Kosnoff as a participant in the solicitation communication  
12 that went out from the committee and, as a participant in a  
13 solicitation, I think he's squarely in front of me for  
14 jurisdiction, so -- for jurisdiction purposes. He has now  
15 injected himself into this case in a way he may not have done  
16 before.

17           But I haven't seen the subpoena that went out. If  
18 it went out from the court in California, then I think Mr.  
19 Wilks is right, under Rule 45, as I recall it, about how one  
20 enforces it, and you can get the court in California to refer  
21 it to me. They may not want to get mixed up in this mess. So  
22 I think that's the rule on Rule 45, and I have on every  
23 occasion Rule 45 has been put in front of me said that  
24 compliance with the rule is what has to happen because that's  
25 the rule.

1                   So I'll look at those papers, but in terms of  
2 whether that subpoena is the appropriate subpoena and whether  
3 I can have the jurisdiction at this point with that subpoena,  
4 from what I'm hearing, that may not be the case, but I'll look  
5 at it.

6                   Ms. Lauria?

7                   MS. LAURIA: Thank you, Your Honor. Going back to  
8 logistics for next week. And, obviously, we're still wading  
9 through the discovery that we received last night, there may  
10 be -- there likely will be in response to some of the  
11 statements made today in court by Ms. Grassgreen some follow-  
12 up discovery we're going to need and potentially depositions.  
13 But, in any event, Your Honor, we would ask that the committee  
14 file response papers -- which we have not seen their response  
15 yet -- by Monday, so that we could potentially put in  
16 something supplemental on Tuesday and be prepared and ready to  
17 go on Wednesday.

18                  I know the Court indicated last week that you would  
19 be open to potentially considering an in-person hearing. I'm  
20 not sure if that's still your perspective, Your Honor, but  
21 certainly the debtors are willing and able to appear in  
22 person, if that's the direction the Court would like to go.  
23 We do think this is a very serious matter and one that does  
24 rise to the level of deserving an in-person hearing, if that's  
25 where you want to go.

1                   Thank you, Your Honor.

2                   THE COURT: Thank you.

3                   Ms. Grassgreen?

4                   MS. GRASSGREEN: Thank you, Your Honor. I think  
5 that the timing of a response is fine, first of all, but what  
6 I wanted to address with Your Honor was the scope of the  
7 hearing on Wednesday and what we are and what we aren't  
8 considering, because I went back and I pulled up the motion  
9 and the order and the relief that was requested -- and there's  
10 been a lot of other things that have been thrown out since the  
11 motion was filed -- one of the drafts of the letter that was  
12 provided to us wanted us to say we understand we might be  
13 subject to sanctions. There's no sanctions motion in front of  
14 you; that may happen. There's no designation motion in front  
15 of you; that may happen.

16                  I think those are the topics, but the relief that  
17 was requested in the motion -- I'm looking at the order now -  
18 - was a couple of things that, frankly, we've already agreed  
19 to. And so I just -- I want to understand what we're talking  
20 about so that we can make sure we tailor our response to this  
21 motion, understanding that there's lots of other issues that  
22 we know are going to come up and we'll deal with them when  
23 they come up and if we need to. For example, vote designation  
24 may or may not ever be an issue depending on the voting here.

25                  But the order and the motion asks that we refrain

1 from distributing for the entirety of the case any  
2 communications on behalf of any state court counsel through  
3 our official Listserv, which that term, I'm not sure exactly  
4 what that means, but, in any event, we agreed to that, we're  
5 willing to do that, and we're willing to agree to their second  
6 request that it only be used for official business. We're  
7 willing to give them notice of any substantive communication  
8 and we had some language that we've sent them, but they  
9 haven't had a chance to respond to, about what they mean by  
10 substantive. For example, can we send a town hall notice.  
11 And the last thing was to send this email, the corrected  
12 email, which we've just been talking about.

13 So I guess where I am, Your Honor, is I'm trying to  
14 understand what it is that you would like for us to address on  
15 Wednesday because there isn't a sanctions motion pending,  
16 there isn't relief pending related to that, there's no -- and  
17 so -- and there's not a designation motion pending, because I  
18 think that frames what we do. And I'm not trying to downplay  
19 it, I'm not trying to say that it's not important, it  
20 absolutely is, but I just think given everything that's going  
21 on, mediation happening, the goal is to not have this impact  
22 confirmation. I just thought we should understand what it is  
23 that you're going to be asked to decide on Wednesday and what  
24 it is that we're going to address substantively at a later  
25 hearing.

1                   THE COURT: Okay. So, Ms. Grassgreen, you're  
2 telling me, as I'm looking at the order, that the committee  
3 has agreed to each one of the requests for relief --

4                   MS. GRASSGREEN: We agreed --

5                   THE COURT: -- for each one of the ordering  
6 paragraphs?

7                   MS. GRASSGREEN: On paragraph 3(a), we agreed;  
8 3(b), we agreed; 3(c), we agreed, but we had a "provided that"  
9 that said things like the town hall, it doesn't apply to the  
10 town hall or it doesn't apply to committee members  
11 communicating. We just wanted to clarify because  
12 "substantive" is not a term. And then on paragraph 4, you  
13 just addressed it.

14                  So we did send a markup of an order along this to  
15 the debtor and the other parties and they have had it, and  
16 they advised us that they weren't prepared to engage with us  
17 about it until they saw the discovery, which we understand.  
18 But, in light of today with the email -- I mean, we could have  
19 a hearing on Wednesday on short notice on what is clearly a  
20 critical issue to talk about whether a further communication  
21 has to go out, if that's productive, but I'm just trying to  
22 understand what it is that we're going to do on Wednesday. I  
23 think, you know, you're busy as well and that makes sense, in  
24 light of our position on the order.

25                  THE COURT: Thank you.

1                   Ms. Lauria, so Ms. Grassgreen raises a good  
2 question.

3                   MS. LAURIA: Your Honor, thank you, two responses.

4                   First, with respect to 3(c) -- and I apologize, I  
5 don't have their markup in front of me, but I believe that's  
6 the section referring to the use of the Listserv for further  
7 communications. As I indicated on -- I guess our hearing was  
8 on Wednesday -- after we see the discovery, we may be seeking  
9 further relief and that relief may certainly impact 3(c). I  
10 know they would like to continue to use the Listserv for  
11 further communications. We may be encouraging the Court that  
12 they can't be using that Listserv at all.

13                  We've already heard from Mr. Goldfarb today that he  
14 wants his clients -- he contacted Mr. Lucas and asked his  
15 clients to be completely taken off the Listserv, and I think  
16 that may be a very necessary form of relief that we are  
17 seeking next week.

18                  With respect to greater forms of relief, you'll see  
19 in the proposed form of order -- and I did indicate this on  
20 Wednesday -- we do reserve our rights. I don't believe that  
21 Wednesday is going to be a vote designation hearing. I do not  
22 think we will be in a position where the dust will have  
23 settled enough on what has happened vis-a-vis this  
24 communication to make that determination, so we're certainly  
25 not going to ask for that.

1           With respect to sanctions, I do expect, Your Honor,  
2 that we will be seeking significant relief with respect to  
3 legal fees that have been incurred in prosecuting this action.  
4 At this point, I can't tell you that's before the Court on  
5 Wednesday. I recognize that that may not be emergency relief  
6 that needs to be heard, but I do want to highlight that for  
7 the Court.

8           And then, you know, we also -- candidly, Your  
9 Honor, we just need to see the discovery because, if the  
10 discovery comes out -- and I'm going to choose my words  
11 carefully in a particular way -- we may need to seek urgent  
12 relief with respect to what the committee is able to do in  
13 terms of communications going forward and I just -- I don't  
14 have the answer to that today.

15           THE COURT: Okay.

16           MS. GRASSGREEN: Your Honor, may I just briefly  
17 respond?

18           We get all of the reservation of rights, we have no  
19 issue with that, we just can't respond to what they haven't  
20 brought forward. So it seems like the only thing that they --  
21 that is a question is the use of the Listserv, at this moment,  
22 acknowledging that after discovery it might, but I think that  
23 bears on what are we doing Wednesday because, if there is  
24 other relief, I think you would agree that we would need to be  
25 provided notice of it and an opportunity to respond.

1                   THE COURT: I do agree with that. So I guess what  
2 I would like to know is -- but I -- well, the debtors need to  
3 have an opportunity to take a look at the discovery responses.

4                   MS. GRASSGREEN: Agreed.

5                   THE COURT: So I would like to know, once you've  
6 done that, whether the committee's exculpation of substantive  
7 communications has -- if there's any disagreement there. If  
8 there's not, then I'm not sure I see the need for a hearing on  
9 Wednesday. If there is and there's something we need to  
10 address, we can address that on Wednesday.

11                  I do want to make certain that the parties' time is  
12 focused on where it needs to be focused. This is -- as you  
13 can tell, I think it's an immensely important issue that needs  
14 to be addressed, we've started addressing it. If there's  
15 anything further on the remediation issue or any of the relief  
16 sought by way of this motion, then I'm available Wednesday,  
17 but I'd like the parties to have discussion about what is  
18 necessary to have. Sanctions can wait, designation is  
19 premature. Maybe we'll be lucky and any harm to the voting  
20 process is minimal, if any, to the extent we can know, and  
21 we'll have to deal with that as that comes up.

22                  So I'd like the parties to talk and, actually, I'd  
23 like to have a -- I'd like to know where parties are by, say,  
24 noon on Monday as to what issues are open or not.

25                  MS. GRASSGREEN: Thank you, Your Honor.

1 MS. LAURIA: Very good, Your Honor. We will confer  
2 with Ms. Grassgreen after we review the discovery. Thank you.

3 THE COURT: Thank you.

4 Mr. Goldfarb, I see your hand.

5 MR. GOLDFARB: Yes, Your Honor. Thank you. I just  
6 wanted to correct the record. Ms. Lauria's comment about what  
7 our preference is as to the communications for our client  
8 wasn't quite accurate. I'm working with the TCC about which  
9 communications should receive. Many of our clients find the  
10 TCC communications enormously valuable and helpful. And so I  
11 just -- the representation that we sort of want to be  
12 absolutely scrubbed from the TCC distribution list just wasn't  
13 accurate because the TCC's communications in general have been  
14 super helpful for our clients.

15 Thank you.

16 THE COURT: Thank you. And, Mr. Goldfarb, I think  
17 the point is that counsel for these individual survivors  
18 should be the ones to be making those kinds of determinations.

19 Mr. Abbott?

20 MR. ABBOTT: Thank you, Your Honor. Derek Abbott,  
21 again, of Morris Nichols for the debtors.

22 Your Honor, we have all had a long weekend and  
23 couple of days, but there is one matter that's off-agenda,  
24 Your Honor, that was tangentially raised at the hearing last  
25 week that -- just to hasten our discovery and focus on, as

1 Your Honor said, where we need to be, getting ready for the  
2 hearing December -- or -- I wonder -- or, excuse me, January,  
3 Your Honor -- I wonder if I might raise one issue that I  
4 believe is resolved, but that will allow the debtors to get  
5 out that last bit of discovery that they have been holding  
6 based on our letter that appears at Docket Item 7031.

7 Your Honor, that letter asked for relief on two  
8 points, the production of certain communications between the  
9 debtors and the insurers that were related to the TDPs and the  
10 production of documents containing the names of alleged  
11 survivors. The deadline for the response to that letter was  
12 last evening, Your Honor; we did not get any responses. So we  
13 believe that it's uncontested and, to that end, would ask if  
14 we could submit an order to the Court. Obviously, we didn't  
15 want to do that without making sure that the Court didn't have  
16 further questions.

17 And I apologize sort of burdening this already  
18 difficult hearing with this matter, but it will facilitate  
19 discovery, I think, and help the parties get ready more  
20 quickly for the confirmation hearing, Your Honor.

21 THE COURT: So I don't have that in front of me,  
22 but my recollection -- well, remind me of the two forms. One  
23 it was communications between the debtor and insurer. I don't  
24 recall that there was any privilege raised and I think my  
25 question after reading that letter was what do you need from

1 me, because I don't think there was any controversy.

2                 Then the second part of it -- but I may be wrong on  
3 that -- the second part of it was permitting sensitive  
4 information, names and et cetera, to go out to certain people  
5 or not be redacted from the discovery, survivor names'  
6 information not to be redacted from discovery. And I guess  
7 the question I had there was, we have a protective order in  
8 place, does this not fall under the protective order?

9                 MR. ABBOTT: Well, Your Honor, that's part of the  
10 relief we sought. Maybe I should turn it over to Mr. Azer,  
11 who has been closer to this issue, to give you the absolute  
12 specifics there, if I may?

13                 THE COURT: Okay.

14                 MR. AZER: Good morning, Your Honor, Adrian Azer  
15 from Haynes and Boone on behalf of the debtors. Can you hear  
16 me?

17                 THE COURT: I can.

18                 MR. AZER: Great. So, on the first issue, Your  
19 Honor, the reason we raised it with the Court is initially we  
20 had framed those communications with the insurers as common  
21 interest privilege, and we obviously inquired with the  
22 insurers if they had any issue with it. Given the time  
23 constraints, we had not heard back from all the insurers and  
24 to date we still haven't, but no insurers have objected. So  
25 the reason we brought it before Your Honor was just to make

1 sure there was no issue, that no one had an issue with it, but  
2 given that we don't, I don't think there is an issue that now  
3 needs to be resolved by the Court. I think we can produce it  
4 without any concerns on the first topic.

5 THE COURT: Okay.

6 MR. AZER: Does that address your question?

7 Now, the second question, Your Honor, I'm actually  
8 going to defer to one of my colleagues at White & Case because  
9 they're closest to that issue on the redaction of the names.

10 MR. KURTS: Good morning, Your Honor, Glenn Kurts  
11 from White & Case on behalf of the debtors.

12 Your Honor has it exactly right that there is a  
13 protective order that protects misinformation. What we have  
14 proposed to do, given how sensitive it is, is to designate the  
15 information as highly confidential, produce it, and then if  
16 anyone wants to make use of that either in the deposition  
17 testimony with respect to a pleading or anything else, that  
18 they can then redact the names.

19 So it seemed a little outside maybe normal  
20 parameters, but it was our effort -- we would normally redact,  
21 but it's really impossible to do so, there's tens of thousands  
22 of pages. Their litigation documents, so the name is all over  
23 the place. Even if we did go through the exercise, which  
24 would take more time than I think would be appropriate and  
25 would burden the estates, it would be all but certain that

1 there would be certain times that something was missed, which  
2 is often the case with redactions.

3 So our proposal is merely to designate it as highly  
4 confidential. Everybody who wants to see it, of course, just  
5 has to be party to the protective order if they do want to use  
6 it. Then, as I mentioned, they can redact the name or file  
7 under seal, and we think that's the best way to minimize  
8 burden and to protect the identifiers of these victims and  
9 also accuseds.

10 THE COURT: Okay, that makes sense to me and --

11 MR. SCHIAVONI: Judge, could I be heard before you  
12 rule?

13 THE COURT: Yes. Are you concerned about the  
14 protective order or the first issue?

15 MR. SCHIAVONI: This issue of releasing common  
16 interest information.

17 THE COURT: Okay, then give me a second.

18 So on the protective order and the -- I guess the  
19 request not to have to redact before discovery, I think, under  
20 the circumstances, that's fine. When you're producing the  
21 documents, obviously, you'll designate them. Please remind  
22 everybody of the sensitivity and the protective order. And,  
23 yes, if anybody is going to want to use anything, we can deal  
24 with that, but it does seem to be appropriate that it should  
25 be redacted at that time. Okay.

1                   MR. KURTS: Thank you very much, Your Honor, we  
2 will do that.

3                   THE COURT: Thank you.

4                   Mr. Schiavoni, on the first, the common interest  
5 issue.

6                   MR. SCHIAVONI: Yeah, Your Honor, I'm now a little  
7 nervous about what they -- if the only issue here was if  
8 there's a non -- completely non-privileged document, a  
9 pleading or such that has the name of a claimant on it and  
10 they want to operate under the protective order in that  
11 regard, that seems to me totally fine, but I'm a little  
12 worried that this is sort of being used as a Trojan horse,  
13 because we were asked what our position was on releasing  
14 common interest privileged material and we made it clear that  
15 that material should not be released.

16                  It's like we're in a case here where none, not a  
17 single charter organization associated with the Boy Scouts is  
18 going to receive protection under this plan. They're all  
19 being sent back in the tort system for litigation, and we're  
20 being faced with ongoing litigation, in essence, with this  
21 trustee over claims involving the local councils to turn over  
22 privileged information that's essential to the ongoing defense  
23 of claims -- first of all, it would vitiate coverage, I think,  
24 if they did that intentionally over our objection -- and, to  
25 be clear, we object to that -- but it also would create

1 immense harm, you know, to these charities and whatnot that  
2 are in the case.

3 So that, yes, we object to the release of any  
4 common interest material. If they're -- and, you know, to be  
5 clear, what they -- you know, what they have sort of hinted at  
6 in the past is like material that derives from underlying  
7 defense counsel and involves statements and recommendations on  
8 cases and whatnot, you know, that material should just not be  
9 released. I mean, if they have pleadings where they have  
10 somebody's name in it, it seems to me that's one thing, but if  
11 this is something else, there is not consensus on it and there  
12 ought to be briefing before it's released wholesale.

13 THE COURT: Okay. Well, I --

14 MR. AZER: Your Honor, may I address that?

15 THE COURT: -- I didn't have this on my radar  
16 screen. So, Mr. Azer, are you going to tell me it's not  
17 common interest privilege?

18 MR. AZER: It's not -- no, it's not the documents  
19 that Mr. Schiavoni is talking about. The only documents we  
20 are -- we filed -- and, by the way, the objection deadline has  
21 passed -- Mr. Schiavoni, the only communications we're talking  
22 about are Haynes and Boone's communications with insurers'  
23 counsel related to the TDPs. You're talking about a  
24 completely different set of documents that is not at issue in  
25 the letter. What you're talking about is apples and oranges.

1 We're talking about only the communications between Haynes and  
2 Boone and the insurers related to the TDPs.

3 THE COURT: Okay.

4 MR. SCHIAVONI: Well, I just -- you know, there are  
5 some of those that embed underlying defense materials, you  
6 know, that I think you ought to show them to us first --

7 MR. AZER: No, they don't.

8 MR. SCHIAVONI: -- I think you ought to show them  
9 to us first and then we can tell you if there's an issue about  
10 common interest material or not.

11 THE COURT: Okay. So let me say this again, then.  
12 I think my recollection -- thank you for that -- is right.

13 My question after I read that letter, albeit  
14 quickly, was what are you asking me for. They're either  
15 privileged and you should not produce them or they're not  
16 privileged and you should produce them. If there's a  
17 privilege concern or you're not sure, or there's an issue why  
18 any privilege that is available to those documents should be  
19 overridden, then you need to bring that to me. But my  
20 recollection now from reading the letter is, they're  
21 privileged or they're not, and I don't think privilege was  
22 raised.

23 So I'll go back and look at it too, but you guys  
24 need to talk. Let me know if there's an issue, we'll get it  
25 on quickly.

1 MR. AZER: Yes. Yes, Your Honor.

2 THE COURT: Mr. Hogan?

3 MS. GRASSGREEN: Your Honor --

4 MR. HOGAN: Thank you, Your Honor, just briefly.

5 Your instruction for me to reach out to Cross & Simon and Mr.  
6 Grey with regard to AVA Law, I just wanted to understand the  
7 mechanism in the event that they have an issue with the  
8 dissemination of the letter.

9 THE COURT: Contact chambers and we'll set up a  
10 continued hearing on it.

11 MR. HOGAN: Right, and so that 12 o'clock deadline  
12 on Monday doesn't apply to that. If I find out sooner, I'll  
13 let you know right away.

14 THE COURT: Yes, please let me know as soon as you  
15 know.

16 MR. HOGAN: Okay. Thank you.

17 THE COURT: Thank you. I see Ms. Wolff.

18 MS. GRASSGREEN: Your Honor, just to understand  
19 that point then, we should wait to hear from Mr. Hogan before  
20 sending the communication rather than sending it today? I'm  
21 just going to --

22 THE COURT: I would like to know if he's got an  
23 issue. I think you all should reach out to him too, but I  
24 think we need to try to get to him as soon as possible.

25 MS. GRASSGREEN: Okay. So just we will not send

1 anything until we confirm that.

2 THE COURT: As I said from the beginning, I'm  
3 concerned with sending communications to represented parties  
4 from a law firm.

5 Okay. Ms. Wolff?

6 MS. WOLFF: Yes. Thank you, Your Honor. And I  
7 apologize that my video is not on. It's about 3:00 a.m. over  
8 here in Guam and this matter was not on the agenda, so I  
9 wasn't prepared to be visible.

10 THE COURT: It's okay.

11 MS. WOLFF: Just going back to, Your Honor, the  
12 protective order issue.

13 THE COURT: Yes.

14 MS. WOLFF: I did intend to file a responsive  
15 letter today. I guess it's maybe my mistake in calculating  
16 the deadline; I didn't count Veterans Day in the three-day  
17 timing. And so, Your Honor, I was going to file something  
18 that is not necessarily oppose the relief that's requested by  
19 the Boy Scouts, but to point out that I do find it problematic  
20 for the Boy Scouts to produce documents, including deposition  
21 transcripts, that many of which are from my clients and which  
22 with some of them do include Social Security numbers, whole  
23 Social Security numbers.

24 And so in the Boy Scouts' letter they did indicate,  
25 I think it was in one of their last sentences of the letter,

1 that they are prepared to -- at the request of a party or  
2 counsel, they are prepared to go through a reasonable number  
3 of documents and to redact the names and other personal  
4 identifying information. And so that's what I intended to do  
5 was to tell them that I believe that my clients -- I  
6 understand names are already a part of the proofs of claim,  
7 but not their full Social Security numbers. And although some  
8 of them may have it, this is going to a broader audience than  
9 people under the protective order or the bar date order who  
10 are permitted to look at proofs of claim.

11 I mean, right now I am not -- as counsel for  
12 certain survivors I'm not allowed to see any other survivors  
13 who's not a client's proof of claim numbers. And this  
14 document production would go to a broader audience, it would  
15 go to other survivors' counsel, it would go to insurers and  
16 chartered organizations who have nothing to do with my  
17 clients' claims, and so they wouldn't see our proofs of claim  
18 and the sensitive information there.

19 And so I just wanted to state that I do think that  
20 the Boy Scouts should make every effort to redact Social  
21 Security numbers. I understand that the names, you know,  
22 that's going to be in a lot, you know, more places and  
23 transcripts and that would be difficult, but it's not  
24 difficult to pinpoint where in the transcripts, the one time  
25 that the Social Security number is mentioned. And so I just

1 wanted to state that, Your Honor. Thank you.

2 THE COURT: Thank you, Ms. Wolff.

3 Mr. Kurts?

4 MR. KURTS: Your Honor, just briefly. We're not  
5 producing to anybody who's not party to a protective order and  
6 Social Security information is confidential, but that's why we  
7 have protective orders and that will be protected. It is  
8 certainly not easy for us to identify ten digits in tens of  
9 thousands of pages when we don't even know what they are. I  
10 just don't think it's a burden that's required and I don't  
11 think anybody would be in a position to misuse, but -- and  
12 they couldn't do that without violating the protective order.

13 And certainly, if counsel, Ms. Wolff, wants to  
14 identify the Social Security numbers for her clients, we'd be  
15 happy to replace our production, which we would like to get  
16 out right away so people have it, with her production. And  
17 everybody can otherwise destroy what we produce with respect  
18 to her clients or any other counsel who wants to undertake the  
19 burden themselves to protect their clients Social Security  
20 numbers somehow beyond that protection that's afforded by a  
21 protective order.

22 THE COURT: Okay. Thank you.

23 MS. WOLFF: And, Your Honor, if I can just respond  
24 briefly? I suspect that this protective order issue may have  
25 been brought about when I reached out to debtors' counsel and

1 raised the issue, and it's because I reached out to them. And  
2 so I doubt that other survivors' counsel even have the ability  
3 or the notice that they would need in order to say, hey, Boy  
4 Scouts, I have a problem with you releasing my Social Security  
5 information. It's because I reached out to them that this --  
6 that -- it's because I noticed it, Your Honor, because I'm a  
7 participating parties, my clients are participating parties  
8 that I'm aware of this. But people who haven't yet filed, you  
9 know, their notice that they're going to be participating  
10 parties, they don't necessarily have the notice, they don't  
11 have the discovery requests and so far their responses and  
12 objections from the debtors, and so they may not know that the  
13 Boy Scouts are willing to work with them or that there's even  
14 a possibility that their client's sensitive information is  
15 going to be distributed to a wider audience.

16                 And that's just a concern that I have is because  
17 the Boy Scouts were saying that they're going to do this,  
18 they're willing to do this, but then they're not telling  
19 people that there's even a risk that their client's  
20 information is going to be produced.

21                 So, thank you.

22                 THE COURT: Thank you. I appreciate the  
23 sensitivity of the information, but I think that is why we  
24 have protective orders. It's going to be designated highly  
25 confidential. People have to be -- have to sign off on their

1 -- to be a party to it or an expert who's signed off, I'm  
2 assuming there's a page for that. So I think that's what can  
3 be done under the circumstances.

4               Okay.

5               MR. HOGAN: Your Honor, Dan Hogan again. I hate to  
6 belabor the point, Your Honor, but what I heard Ms. Grassgreen  
7 indicate was that until I hear back from AVA Law and Joe Grey,  
8 that they're not going to send out a letter, and I'm concerned  
9 if I don't hear back from Joe Grey that this thing could  
10 derail and get pushed into next week.

11              THE COURT: Well, I'm hoping that Mr. Grey or  
12 someone in his office is around and we can have an indication  
13 today.

14              MR. HOGAN: I've already sent an email to Mr. Grey  
15 during the pendency of this hearing, Your Honor, so --

16              THE COURT: Thank you.

17              MR. HOGAN: -- I'm trying to move the ball forward.

18              THE COURT: I appreciate that.

19              Okay, I think that concludes this hearing. My  
20 chambers can be reached, if we hear from Mr. Grey and there's  
21 a no, and then I'll make some decisions, but in the first  
22 instance I'm going to give him an opportunity. I know Ms.  
23 Lauria and Ms. Grassgreen will be speaking with respect to  
24 next week's hearing.

25              And, in the meantime, if there are other discovery

1 disputes, let's -- we have next Friday already set aside for  
2 discovery disputes. Please, when you file something, contact  
3 chambers to let us know, so that we have it on the list.

4 Okay?

5 MR. SCHIAVONI: And, Judge --

6 THE COURT: Yes.

7 MR. SCHIAVONI: -- just to try -- just in the  
8 interest of trying to avoid a discovery dispute, okay? I  
9 heard you loud and clear and I'm not arguing anything about  
10 the ruling that you made sort of in connection with the  
11 Kosnoff deposition, but I can go out and file a motion to  
12 transfer and generate lots of activity that way. I thought  
13 Your Honor indicated that Mr. Kosnoff, to the extent he  
14 injected himself in solicitation, was subject to the  
15 jurisdiction of the Court. So, alternatively, I could just  
16 issue a notice and work with Mr. Wilks on an appropriate day.  
17 And if the Court was of the view that a notice would be  
18 adequate, I can avoid, you know, having to go through three  
19 weeks of back and forth on the transfer.

20 So, I'm sorry if I asked for like a view on that if  
21 it's not appropriate, it's just meant to speed things along,  
22 but would a notice work here?

23 THE COURT: I think a notice works.

24 MR. SCHIAVONI: Okay. Thank you, Your Honor.

25 THE COURT: Okay. Thank you very much then,

1 counsel. We are adjourned.

2 COUNSEL: Thank you, Your Honor.

3 (Proceedings concluded at 12:09 p.m.)

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7

8 CERTIFICATE

9

10 We certify that the foregoing is a correct transcript  
11 from the electronic sound recording of the proceedings in the  
12 above-entitled matter.

13

14 /s/Mary Zajaczkowski  
Mary Zajaczkowski, CET\*\*D-531

November 12, 2021

15

16 /s/William J. Garling  
William J. Garling, CE/T 543

November 12, 2021

17

18 /s/ Tracey J. Williams  
Tracey J. Williams, CET-914

November 12, 2021

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